# Criminal Division

**CHRISTOPHER A. WRAY**
**ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION**

**REMARKS* TO THE**
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*Note: Mr. Wray frequently speaks from notes and may depart from the speech as prepared.

Thank you for that kind introduction and for the invitation to be here. By now, it should be completely clear that rooting out corporate fraud and restoring public confidence in the integrity of our markets is one of the Administration's highest priorities. I'd like to talk with you about the President's Corporate Fraud Task Force, what it is, what it does, and so on. I'd also like to talk about how our approach to criminal investigations of corporations has evolved since the President announced his Corporate Fraud Initiative two and a half years ago.

In particular, I thought I'd talk a little about two closely related issues: the increased importance we're placing on companies cooperating with government investigations, and how we evaluate the authenticity of that cooperation. I'll also offer some quick observations about a couple of other areas we're giving renewed emphasis: aggressive response to efforts to obstruct government investigations; and greater attention to the complicity of professionals (accountants and even lawyers, for example) where appropriate. If I have time, I'll touch briefly on our recent prosecutions for violations of the Foreign Corrupt Practices Act and for failures to maintain anti-money laundering programs.

## The President's Corporate Fraud Task Force

President Bush established the Corporate Fraud Task Force about two and a half years ago and called on us to clean up corruption in the boardroom, restore investor confidence in our markets, and send a strong message that corporate wrongdoing won't be tolerated. From the Enron scandal that surfaced in late 2001, through the WorldCom and Adelphia prosecutions announced in the summer of 2002, a series of high-profile acts of deception in corporate America had shaken the public's trust in the markets and the economy. A few dishonest individuals hurt the reputations of many honest companies and executives.

The Corporate Fraud Task Force was a response to this crisis of confidence. The Task Force is chaired by the Deputy Attorney General, and, in addition to me and the head of the Department's Tax Division, includes several key U.S. Attorneys as members. It also includes a whole slew of law enforcement and regulatory agencies, including the FBI, the Postal Inspection Service, the SEC, the CFTC, the IRS, and quite a few others. At the leadership level, we meet periodically in D.C., mapping out strategy, best practices, and ways to leverage each other's expertise. At the working level, of course, our offices are talking daily on individual matters.

By marshaling our collective resources, we've been able to conduct thorough but remarkably swift investigations—what we've been calling "real-time enforcement"—in

even the most sophisticated cases. In this way, we've met the President's charge by making clear that corporate fraud won't be tolerated. Just as importantly, there are signs that public confidence in our markets is returning.

## Successes of the Task Force's First Two Years

Since the Task Force's start through this past November, we've:

(1) Obtained over 600 corporate fraud convictions; and

(2) Charged over 990 defendants—and convicted 77 corporate CEOs and presidents—with some type of corporate fraud crime, in connection with over 480 charged cases.

In the Enron matter alone, our Enron Task Force has charged 33 defendants, including the former Chief Accounting Officer, Rick Causey, the former CFO, Andy Fastow, the former CEO, Jeff Skilling, and most recently the former Chairman, Ken Lay, along with a bevy of other former Enron executives. We've also seized a whopping $162 million plus for the benefit of victims of the Enron frauds.

During the Task Force's second year, our prosecutors won important convictions in the Adelphia, Craig Consumer Electronics, Dynegy, Martha Stewart, Frank Quattrone, and U.S. Technologies matters.

On the civil enforcement side, the SEC got a $2.25 billion penalty—the largest in SEC history—against WorldCom, and settled significant financial fraud, reporting, and disclosure cases with companies including Gemstar, Lucent, and Vivendi. The SEC also brought and settled a number of significant cases against mutual funds and their executives, financial services providers, and brokers for alleged market timing and late trading in fund shares.

We believe these successes reflect how much better we're getting at coordinating aggressively and effectively. The kind of coordination that now exists on the Task Force ensures priority and focus and maximizes our combined impact.

## "Real-Time Enforcement"

A major benefit of this aggressive, team-oriented approach is, again, that ability to bring "real-time enforcement"—in other words, punishing wrongdoers promptly after they commit their crimes. Simply put, speed matters in corporate fraud investigations.

The days of five-year investigations, of agreement after agreement tolling the statute of limitations—while ill-gotten gains are frittered away and investor confidence sinks—are increasingly a thing of the past.

Instead, now, restoring some of those gains to investors and other victims before they can be dissipated or stashed in some offshore account is one of our principal aims. Where executives have committed fraud, protecting the public (and, frankly, the company itself) often requires quick action to remove wrongdoers from their positions so they can't run the company further into the ground. A rapid, real-time response to allegations of fraud is critical to maintaining confidence in the markets and the economy as a whole.

The Task Force's commitment to just such a response has had a dramatic impact. Criminal charges are often now brought months, instead of years, after investigations begin.

Our new strategy of "segmenting" investigations is a perfect illustration of this major shift. These cases are so complex that we could easily spend years investigating them. But we don't have years to build the "perfect" case, in which every defendant and all wrongdoing are compiled into a single mother-of-all indictments or enforcement action. Rather, agents and prosecutors take action as swiftly as the evidence allows. We identify distinct cases, which may comprise separate segments of conduct involved in a larger investigation, and bring them as fast as we can.

For example, in the Enron investigation, we've systematically unraveled the most complicated corporate scandal in history. We've charged 33 defendants so far, but not in one big case. We peeled off Arthur Andersen and quickly won a conspiracy conviction. Many Enron executives, including the CFO, have pled guilty to parts of the massive fraud that destroyed the company. That step-by-step approach led to the indictments of Skilling and Lay last year. Although the investigation has continued for more than two years—and remains active and ongoing—these results are lightning-fast compared to the old way of doing things.

In the case of Adelphia, one of the country's largest cable operators, investigators began looking into allegations of accounting fraud in April 2002, just days after the allegations first surfaced. They quickly uncovered a management scheme to deceive the public about Adelphia's performance. Within only four months, from April to July, the CEO and four other top executives were in handcuffs. The CEO and CFO were convicted last July.

In the WorldCom investigation, the SEC filed its civil enforcement action the day

after WorldCom revealed its improper accounting for billions in expenses. Prosecutors immediately began an intensive criminal investigation. Although it soon became clear that accounting irregularities extended to many aspects of WorldCom's financial reporting, the prosecutors focused on those most likely to support criminal charges, and charged the CFO and Controller just five weeks after the revelation of fraud. The CFO pled guilty and agreed to cooperate with us. That helped secure the indictment of the CEO, Bernie Ebbers, whose trial is now underway.

## Expecting Corporate Cooperation

To conduct these complex investigations quickly and thoroughly, we've simply got to secure the companies' true cooperation, where appropriate. Sometimes, we'll prosecute only the guilty employees and executives, but in other cases, we seriously consider prosecuting the company itself. Our message on this point is two-fold: Number one, you'll get a lot of credit if you cooperate, and that credit can make the difference between life and death for a corporation. Number two, you'll only get credit for cooperation if it's authentic. You have to get all the way on board and do your best to help the Government.

On the one hand, that doesn't mean we automatically prosecute companies that don't cooperate. And on the other hand, in some rare cases, the conduct may be so outrageous that no amount of cooperation will persuade us not to prosecute. But in most cases, cooperation is a very important factor in our charging decision.

What I find especially encouraging—and a credit to a number of companies and their executives—is that we're seeing more and more cooperation. Maybe more companies recognize the resources we've devoted to corporate fraud and see that we mean business. Maybe they see that we investigate and prosecute these cases in weeks or months, not years. Maybe they realize that adopting a new ethical standard is really in everyone's long-term economic interest. Whatever the reason, those companies that have actually weathered a corporate crisis are almost invariably the ones that understand that cooperation means a lot more than doing the bare minimum necessary to comply with our subpoenas.

Those companies are raising the bar. They want to make sure they get proper credit for cooperation. They're not just looking for a passing grade, they're shooting for an A+. They call us; they don't wait for us to call them. All too often, management would prefer to lay low and hope the crisis will blow over. But when the company sits quietly instead of coming forward, it's not only a red flag that something may be seriously wrong, it also makes it less likely that the company will get credit for prompt

cooperation. In contrast, a company that steps up and begins a dialogue makes a great first impression.

I'll give you some examples of how serious some companies have gotten about cooperating with the Government. Now, there's no magic formula; none of these things is either a requirement on one extreme or a safe harbor on the other.

> More and more companies have made witnesses available whenever and wherever we want to interview them, without subpoenas. That helps us investigate a lot more quickly and efficiently.
>
> Some companies have taken swift disciplinary action, not only by replacing managers who are accountable for the underlying problems, but by terminating employees who refuse to cooperate with the investigation.
>
> A lot of companies have turned over interview memoranda and other materials generated in their internal investigations, notwithstanding any claim of privilege they might have.

I want to pause for a second to be very clear on this point because I've heard a lot of anxiety and misunderstanding on it: Waiving the privilege is <u>not</u> a requirement or a litmus test for cooperation. But it <u>is</u> a very valuable and helpful action that goes a long way toward persuading us that a company's cooperation is authentic. It's a big step, and we recognize that. If your client takes that step, we should be giving them more credit for it than if they hadn't.

> Companies have directed professionals working for them, including outside auditors and counsel, to meet with us and give us prompt access to their workpapers and other records.
>
> Some companies have postponed or adjusted their internal investigations to suit our needs. Instead of working at cross-purposes, they coordinate with us to contribute to the investigation efficiently.
>
> Several companies have agreed to retain attorneys and accountants of our choice to evaluate their business practices, and to accept their recommendations. That can produce real and substantial reform.
>
> In a few dramatic cases, members of the company's most senior management have actually worked directly with prosecutors and agents and directed employees to cooperate on pain of termination. Needless to say,

that kind of personal involvement can be an awfully impressive demonstration of a company's commitment to cooperation.

Other companies talk the talk, but don't really walk the walk. Companies that find themselves under investigation almost always tell us—and invariably tell the public—that they're "fully cooperating." We now take a harder look at whether the company is really cooperating with us, or just paying lip service to doing so. When a corporation acts responsibly and promptly to help us, it can contribute a lot to a fair and speedy resolution of the investigation. All too often, though, the company's actions, even if they don't amount to downright obstruction, can delay and impede us.

## Alternative Resolutions

Just as companies can demonstrate true cooperation in different ways, we're encouraging prosecutors to develop flexible and innovative approaches as they work to ensure that companies accept responsibility and cooperate with us. In certain cases, an alternative resolution—like a deferred prosecution or even a nonprosecution agreement—can strike that balance.

One option we've used increasingly is the deferred prosecution agreement, which some people describe as pretrial diversion. We file charges, but agree to defer prosecution for a year, two years, or even longer. In return, the company agrees to cooperate fully and admits publicly the facts of its misconduct. It also typically makes a payment, which can be structured as a fine, restitution, forfeiture, or some other category. We can also require the company to take remedial actions to make sure the conduct doesn't happen in the future. If the company complies with the agreement, the charges are dismissed at the end of the term. If not, we go to trial, now armed with the company's admission and all the evidence we obtained from its cooperation. In other words, if the company violates the agreement, its conviction is virtually a foregone conclusion.

The DP structure has many of the same benefits as a conviction. In terms of remedies, anything that the judge could impose under the organizational sentencing guidelines can be required under a DP agreement. The DP won't result in a criminal conviction if the defendant complies with the agreement, but filing charges publicly condemns the company's conduct.

For example, in December, the Criminal Division's Fraud Section and the U.S. Attorney's Office in Alexandria entered into a DP agreement with America Online. In 2000, AOL entered into a strategic partnership with PurchasePro, a software firm, and

helped PurchasePro meet its revenue goals by buying products that AOL didn't need. AOL then helped mislead PurchasePro's auditors about where the revenue really came from.

The Government charged AOL, pursuant to a DP agreement, with aiding and abetting securities fraud. AOL admitted its conduct in a statement of facts that we filed with the court, and paid $210 million in restitution and penalties. AOL must also cooperate with the investigation, adopt internal controls, and work with an independent monitor. After 2 years, we'll move to dismiss if AOL has complied with the agreement.

In other cases, we've used nonprosecution agreements with cooperating companies. These don't involve the filing of charges, but we still typically require the company to admit its conduct publicly. We also retain enormous leverage over the company, because we reserve the right to prosecute if it fails to comply with the agreement – again, armed with the company's admissions. And we can still include virtually any combination of payments and remedial measures.

In the Enron investigation, we entered into nonpros agreements with Merrill Lynch and CIBC, a large Canadian bank, both of which had facilitated fraudulent transactions involving Enron. Both banks cooperated quickly and fully, and agreed to very substantial remedial measures. They also agreed to admit publicly their roles in the Enron meltdown. Getting cooperation like that has helped us move more quickly and extensively in the Enron investigation.

In some cases, despite our emphasis on cooperation, we'll still insist on an outright guilty plea by the company, as we did in the Guidant investigation out in San Francisco. And, of course, companies need to understand that we won't hesitate to indict and vigorously pursue companies themselves, not just their executives, where it's warranted. There is, after all, more than one factor in the Thompson memo. Last April, for example, we indicted not only four officers but Reliant Energy Services itself, in investigations into the manipulation of the California energy markets.

## **Obstruction of Justice**

Across the board, we're also taking obstructive conduct more seriously, and not just in our own criminal investigations. Folks who lie to the SEC should know that we won't hesitate to prosecute them. Compliance with SEC investigations is important to all of us, especially as we coordinate more with each other and benefit on the criminal side from that coordination. Those who lie in an SEC deposition or destroy documents in an SEC investigation are hiding the truth from all the members of the Corporate

Fraud Task Force and will have more than just the SEC to worry about. Lying to government investigators needs to be seen as one of the surest paths to severe consequences. That message should be coming through loud and clear with the convictions of Martha Stewart, Frank Quattrone, and, of course, Arthur Andersen.

There may even be instances where executives don't have to lie directly to the government to face obstruction charges. In 2002, the FBI and the SEC began investigating accounting practices at Computer Associates, a huge software company. CA promised to cooperate and hired a law firm to conduct an internal investigation. Those attorneys interviewed various executives, who falsely denied using improper accounting to meet earnings estimates. The company later waived all privileges and provided the results of the internal investigation—including the false statements—to federal investigators. The Brooklyn U.S. Attorney's Office then charged them with obstruction of justice for misleading the company's own lawyers. Last April, each of those three executives pled guilty to obstructing justice and securities fraud. Two face up to 10 years in prison; the third could be jailed for as long as 20 years.

These investigations are already hard enough. We simply can't allow companies or executives to make them even harder by obstructing. When that happens, we're going to respond swiftly and severely.

## The Role of Professionals

As the Andersen conviction illustrates, some of the people obstructing investigations—or even committing the underlying criminal conduct—will be professionals: accountants, investment bankers, and lawyers. These folks are not off-limits to our investigations. Among the six top executives convicted in the Rite-Aid case in Pennsylvania, for example, was the company's general counsel, who lied and obstructed the SEC's investigation. Among the Enron defendants are a number of investment bankers at Merrill Lynch, indicted for assisting the fraud. In Brooklyn, after we indicted executives whose fraud led to the collapse of paper manufacturer American Tissue and cost banks and investors almost $300 million, we also arrested a former Arthur Andersen auditor who had shredded documents as the scheme unraveled. And in the Nicor Energy case in Chicago, we've indicted one of the company's outside lawyers for his role in the fraud. Even where criminal charges aren't warranted against professionals, action by the SEC or other agencies may apply.

You can expect to see more prosecutions of professionals where it's warranted. These are big sophisticated companies, involved in big sophisticated deals, which the companies' executives don't put together all on their lonesome. We wouldn't be doing

our jobs if we weren't asking now, in every corporate fraud investigation, "What about the professionals?" "Where were they?" "What was their role?"

## Foreign Corrupt Practices Act

Another area where these trends are having an impact is our enforcement of the Foreign Corrupt Practices Act. I assume everyone here is basically familiar with the FCPA, making it illegal for U.S. companies to get business abroad by bribing foreign government officials. Even today, attitudes toward that kind of conduct vary widely among executives around the world and, unfortunately, right here at home. Some folks persist in thinking that bribery is just a cost of doing business in certain countries. The problem is, these bribes undermine exactly what the Corporate Fraud Task Force is intent on restoring: public confidence in the integrity of American business. Under-the-table bribes distort the playing field and hide the truth from the public.

For a number of reasons, I think you'll continue to see steady growth in the number of our FCPA cases. First, the SEC has significantly stepped up enforcement of the FCPA's civil provisions against publicly held companies. That's only helped our efforts on the criminal side, as we coordinate our enforcement efforts, conduct parallel investigations, and bring civil and criminal charges simultaneously when appropriate.

Second, we're seeing more cooperation from anti-bribery investigators and prosecutors around the world. That kind of cooperation is essential because these are often tough cases to make. Evidence of the bribe is often located abroad—sometimes in the very country whose officials have been bribed. And these matters are almost always politically sensitive. Our investigators rely on the good graces and cooperation of our international partners. Our relationships with them—particularly the French, the Germans, and the Swiss—are healthy and growing stronger and more productive every day.

Finally, we're seeing many more companies disclose FCPA violations voluntarily. As I said earlier, companies are getting the message that we're serious about rooting out illegal corporate conduct, and that helping us get to the bottom of it is far wiser than laying low or trying to hide it.

The extent of such cooperation can be reflected in the deferred prosecution and nonpros agreements I mentioned earlier. The breadth of outcomes in our FCPA cases illustrates our willingness to craft an appropriate disposition for each set of circumstances. In each case, the companies have agreed to cooperate fully with ongoing civil and criminal investigations, improve internal controls and compliance, and retain

independent monitors.

Last month, for example, the Department charged Monsanto, a global producer of agricultural products, for making an illegal payment to a senior Indonesian official for the approvals and licenses necessary to sell its products in Indonesia, and with falsely certifying the bribe as "consultant fees" in the company's books. We agreed to defer prosecution for three years and Monsanto will pay a $1 million penalty. We'll dismiss the charges after three years if Monsanto has satisfied our agreement.

This past December, the Department entered into nonprosecution agreements with General Electric and InVision Technologies, a maker of airport security screening products designed to detect explosives in passenger baggage. InVision employees had paid or offered to pay foreign officials in Thailand, China, and the Philippines to buy and install their airport security products. GE discovered the transactions while performing due diligence in anticipation of acquiring InVision, and voluntarily disclosed the conduct to the Department and the SEC. InVision disgorged almost $600,000 in profits and paid a criminal penalty of $800,000; GE agreed to integrate InVision into its own FCPA compliance program.

It's important to note, however, that not all FCPA investigations result in deferred prosecution or nonpros agreements. Again, the Thompson memo has more than one factor. Last July, ABB Vetco Gray and ABB Vetco Gray UK—the U.S. and U.K. subsidiaries of Swiss company ABB—each pled guilty to FCPA violations. In pursuing oil and gas construction contracts in Nigeria, these companies had paid more than $1 million in bribes to Nigerian officials for confidential bid information and favorable recommendations. Parent company ABB voluntarily disclosed the suspicious payments to the Justice Department and the SEC. Each subsidiary paid a criminal fine of $5.25 million. On the civil side, ABB agreed to disgorge $6 million in profits and to hire an outside consultant to review its system of internal controls. I think you can expect rigorous and fair enforcement of the FCPA to remain a major priority for the Department.

## Bank Prosecutions

Let me wind up by touching briefly on another set of cases to which the Department—and the public—have been paying greater attention recently. Over the past two years, the Department has pursued criminal charges against five banks for failing to safeguard against money laundering or to report suspicious financial transactions to the Government. The most recent, of course, was the guilty plea we secured from Riggs Bank itself, right here in DC. I want to make a couple of points about these cases.

First, contrary to the perception of some in the banking industry, the Department is not filing criminal charges against banks for simply neglecting to report one or two suspicious transactions. We're not prosecuting for negligence. Rather, the cases we've brought were triggered by egregious failures, over periods of years, to perform a minimal level of due diligence.

For example, from 1995 through 1998, the Banco Popular in Puerto Rico allowed drug dealer Roberto Ferrario to launder about $32 million in cash drug proceeds. The bank believed Ferrario's story that he ran a telephone service business two doors down from the bank branch he used, but never walked down the street to see where all this money was coming from. The bank failed to report huge cash deposits—at times over $500,000 a day—that took tellers hours to process. The bank didn't file a Suspicious Activity Report until February 1998, after about $21 million of narcotics proceeds had been laundered at one branch.

Another example: Over a two-year period, several drug trafficking organizations used Broadway National Bank in New York to launder their money. The drug dealers used accounts opened by several front businesses located within a few blocks of the bank branch. Just a short walk and a look-see would have confirmed that these small businesses couldn't have generated all of the cash being deposited. Broadway failed to report suspicious transactions involving hundreds of bulk cash deposits totaling more than $46 million and thousands of structured deposits of more than $76 million in cash into more than 100 separate accounts.

Now, given that most banks are good corporate citizens, this sort of behavior should outrage the rest of industry. Banks like the ones I just mentioned have completely and unfairly abandoned their legal obligations, unlike most of their peers (and competitors) that take these responsibilities very seriously. In the Broadway case, for example, when the agents asked a drug trafficker why he laundered his drug proceeds through Broadway, the traffickers said that at Broadway, "they didn't ask any questions." Prosecuting these rogue banks helps to level the industry's playing field.

These examples also illustrate my second point: Strengthening safeguards against money laundering is critical to fighting other types of crime. Congress didn't pass the relevant statutes, and we don't enforce them, to just annoy the banking industry. Rather, we do so because it makes life harder for the people who need to launder money: drug dealers, terrorists, and others like them. The one thing that all of these bad guys need is money. Terrorists need it to pay rent, book airplane tickets, rent cars, secure identification, build bombs, and so on. That's why our efforts to clamp down on

terrorist financing are so important, and getting banks to remain vigilant and cooperative is just another part of that fight. As I've said often when speaking to audiences about the Department's efforts to fight terrorism, we'd much rather catch a terrorist with his hands on a check than on a bomb.

## Conclusion

To wrap up: By offering your clients sound advice in times of crisis, you can help them fix a corrupt corporate culture and focus on their core businesses. You're the ones they're going to listen to in deciding when to make a voluntary disclosure; you're the ones who help them put in place real compliance programs; you're the ones they're going to heed in deciding how to handle or launch internal investigations. And the more folks we have focused on fraud prevention, the better off we'll all be as a nation. I hope that our combined efforts strengthen the integrity of the market place, protect the public, and restore confidence—confidence that the few bad apples are being ferreted out and dealt with severely, so that the remaining vast majority will be trusted the way we all want them to be.

Thank you.